

**INFORMATION SHEET**  
**DETERMINATIONS OF NO JURISDICTION FOR ISOLATED, NON-NAVIGABLE, INTRA-STATE WATERS**  
**RESULTING FROM U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF NORTHERN COOK**  
**COUNTY V. U.S. ARMY CORPS OF ENGINEERS**

**DISTRICT OFFICE:** Omaha District  
**FILE NUMBER:** 200460755

**REGULATORY PROJECT MANAGER:** Erhardt **Date:** 11/17/04

**PROJECT REVIEW/DETERMINATION COMPLETED:** In the office Y (Y/N) **Date:** 11/17/04  
 At the project site    (Y/N) **Date:**                     

**PROJECT LOCATION INFORMATION:**  
**State:** North Dakota  
**County:** Burke  
**Center coordinates of site by latitude & longitudinal coordinates:** Lat 48-58-50 Long 102-30-14  
**Approximate size of site/property (including uplands & in acres):** 170 acres [7 mile project]  
**Name of waterway or watershed:** Des Lacs Watershed

**SITE CONDITIONS:**

Type of aquatic resource <sup>1</sup>	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear feet	Unknown
Lake									
River									
Stream									
Dry Wash									
Mudflat									
Sandflat									
Wetlands	X	X							
Slough									
Prairie pothole									
Wet meadow									
Playa lake									
Vernal pool									
Natural pond									
Other water (identify type)									

<sup>1</sup>Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors <sup>1</sup> :	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able To Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?			X		
Is or would be used as habitat by other migratory birds that cross state lines?			X		
Is or would be used as habitat for endangered species?		X			
Is used to irrigate crops sold in interstate commerce?		X			

<sup>1</sup>Check appropriate boxes that best describe potential for applicability of the Migratory Bird Rule to apply to onsite, non-jurisdictional, isolated, non-navigable, intra-state aquatic resource area.

**TYPE OF DETERMINATION:** Preliminary    Or Approved X

**ADDITIONAL INFORMATION SUPPORTING NJD** (e.g., paragraph 1 – site conditions; paragraphs 2-3 – rationale used to determine NJD, including information reviewed to assess potential navigation or interstate commerce connections; and paragraph 4 – site information on waters of the U.S. occurring onsite): The project includes reconstruction of 7 miles of county highway. In addition to three (3) international waterways, sixteen (16) isolated wetland basins are located along the proposed project. They range in size from 0.01 acre to 1.4 acres. Based on information such as soil surveys, NWI and USGS Quad maps, these basins are isolated, intrastate and non-

navigable. No tie to interstate commerce can be made other than through migratory birds. The basins are not jurisdictional based on the SWANCC ruling.